

Public Defender Oversight Materials

This packet includes:

- A staff memo providing information about a possible committee bill
- Relevant sections of law governing LJC oversight of the OPD
- SB 146 (2005 Session)

May 21, 2018

Law and Justice Interim Committee

POSSIBLE STATUTORY CHANGES TO CLARIFY LEGISLATIVE OVERSIGHT OF THE OFFICE OF STATE PUBLIC DEFENDER

Purpose

The Law and Justice Interim Committee (LJIC) may wish to consider a committee bill to revise two laws related to its oversight duties for the Office of State Public Defender (OPD). The two possible changes are highlighted below.

Clarify the committee assigned to oversee the OPD during interims

The 2017 Legislature made several revisions to the organizational structure and duties of the OPD. One of the revisions inadvertently removed language that clarifies the interim committee that is responsible for overseeing the OPD operations during the interim.

The OPD is administratively attached to the Department of Administration (DOA). The State Administration and Veterans' Affairs (SAVA) Interim Committee is required by section 5-5-228, MCA, to conduct interim agency oversight for the DOA. However, given the LJIC's subject matter knowledge and interest in OPD affairs, section 5-5-226, MCA, specifically assigns oversight of the OPD to this committee. To avoid any conflict between those two statutes, section 5-5-228, MCA, previously contained language exempting the OPD from SAVA oversight. That exemption language was stricken from section 5-5-228, MCA, in the 2017 session by House Bill 77, which revised the organizational structure of the OPD.

The LJIC members might consider putting the exemption back into section 5-5-228, MCA, to ensure there is not uncertainty about the interim committee that has oversight duties for OPD. The current and previous versions of the affected sections of law are attached to this paper with the relevant subsections highlighted.

Add required report to codified statute

In 2005, the Legislature created the statewide public defender system by enacting Senate Bill 146. In addition to consolidating the public defender functions previously performed and funded on the county-level, the bill required various reports and data to be collected.

One of these reports requires the Legislative Fiscal Analyst (LFA) to compare general fund revenue, statutory entitlement share payments to local governments, and actual costs to operate the statewide public defender system. The report must be provided to the governor, the Legislative Finance Committee, the Law and Justice Interim Committee, and the Montana Supreme Court.

May 2018

Possible Statutory Changes to Clarify Legislative Oversight of the Office of the State Public Defender
Law and Justice Interim Committee
Rachel Weiss

Although the bill was enacted in 2005, the analysis was to start in 2011 and continue at 5-year increments after that year. Unlike most ongoing reports that the Legislature requires, this particular subsection of SB 146 was not codified, meaning it wasn't assigned a specific statute number for future reference. (Codified sections are those printed with statute numbers in the Montana Code Annotated books.) However, because the report is in session law (section 72, Ch. 449, Laws of 2005), it is still a required duty of the LFA.

As of this interim, the analysis has not been performed or the report provided to the various stakeholders nor were current legislative or agency staff aware of the requirements until the agency staff rediscovered the subsection earlier this year.

The LJIC members might consider a bill draft to revise statute either to ensure the analysis and report are completed as the 2005 Legislature required or to eliminate the report from session law. The LJIC would have at least three options in this regard, the first two of which would require legislation:

1. Move the report requirement from session law into a codified section of the Montana Code Annotated to make it easier to track;
2. Eliminate the report requirement from session law; or
3. Take no action.

Even if the LJIC or a future legislature took no action on this matter, the LFA is still required to report the information.

The section of SB 146 that creates the report is attached to this paper and available on the LJIC's webpage for the May 2018 meeting.

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MCA Contents / TITLE 5 / CHAPTER 5 / Part 2 / 5-5-226 Law and justic...

Montana Code Annotated 2017

TITLE 5. LEGISLATIVE BRANCH

CHAPTER 5. LEGISLATIVE PROCEDURES

Part 2. Organization -- Interim Committees

Law And Justice Interim Committee

5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

History: En. Sec. 28, Ch. 19, L. 1999; amd. Sec. 13, Ch. 210, L. 2001; amd. Sec. 2, Ch. 91, L. 2011.

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TITLE 5. LEGISLATIVE BRANCH

CHAPTER 5. LEGISLATIVE PROCEDURES

Part 2. Organization -- Interim Committees


State Administration And Veterans' Affairs Interim Committee

5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

- (a) department of administration, except:
 - (i) the state compensation insurance fund provided for in **39-71-2313**, including the board of directors of the state compensation insurance fund established in **2-15-1019**;
 - (ii) the state tax appeal board established in **2-15-1015**; and
 - (iii) the division of banking and financial institutions;
 - (b) department of military affairs; and
 - (c) office of the secretary of state.
- (2) The committee shall:
- (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;
 - (b) establish principles of sound fiscal and public policy as guidelines;
 - (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and
 - (d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.
- (3) The committee may:
- (a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.

History: En. Sec. 30, Ch. 19, L. 1999; amd. Sec. 15, Ch. 210, L. 2001; amd. Sec. 1, Ch. 2, Sp. L. December 2005; amd. Sec. 3, Ch. 91, L. 2011; amd. Sec. 2, Ch. 19, L. 2013; amd. Sec. 1, Ch. 20, L. 2013; amd. Sec. 2, Ch. 41, L. 2015; amd. Sec. 7, Ch. 358, L. 2017.

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MONTANA CODE ANNOTATED 2015

IMPORTANT
THIS IS NOT THE MOST CURRENT MCA
THE 2017 MCA IS AVAILABLE HERE.
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1 SENATE BILL NO. 146

2 INTRODUCED BY D. MCGEE

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT;
6 PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM
7 TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS;
8 SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO
9 BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A
10 PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER;
11 ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE
12 DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY;
13 PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM;
14 PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR
15 DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR
16 CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF
17 STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; ~~PROVIDING A~~
18 ~~COST-SHARING FORMULA FOR STATE, COUNTY, AND CITY FUNDING~~; CHANGING THE LOCAL
19 GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL
20 GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING
21 PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND
22 EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF
23 ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES
24 IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN
25 IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING
26 RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS;
27 AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501,
28 ~~26-2-505~~, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607,
29 41-3-1010, 41-3-1012, 41-5-111, ~~41-5-112~~, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113,
30 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201,

1 appointed by the governor to simultaneously serve on the public defender commission and the appellate
2 defender commission until the appellate defender commission terminates pursuant to this section. A member
3 serving on both commissions simultaneously is entitled to the compensation provided for the public defender
4 commission in [section ~~67(5)~~ ~~70(5)~~ ~~68(5)~~] when engaged in the official duties of the public defender commission,
5 provided that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period
6 of time.

7
8 **NEW SECTION. Section 71. Rights to property.** (1) Subject to subsection (2), office equipment,
9 computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public
10 defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the
11 county or city and the state.

12 (2) (a) An employee of a county or city public defender office who becomes a state employee under
13 [section ~~66~~ ~~69~~] retains the right to use all property relating to the functions of the office and being used by the
14 employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies,
15 contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other
16 similar property. However, the employee may not use or divert money in a fund or account for a purpose other
17 than as provided by law.

18 (b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as
19 provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts
20 to the county or city.

21 (3) This section does not apply to property owned by the federal government.

22
23 **NEW SECTION. SECTION 72. IMPLEMENTATION -- DETERMINATION OF ACTUAL COSTS -- LEGISLATIVE AUDIT**

24 **-- REPORT: (1) THE LEGISLATURE'S INTENT IS TO PROVIDE THAT:**

25 **(A) FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES PURSUANT TO [SECTIONS 1 THROUGH 4 AND**
26 **6 THROUGH 14] WILL BE SHARED BY STATE AND LOCAL GOVERNMENT; AND**

27 **(B) THE COUNTIES, CONSOLIDATED GOVERNMENTS, AND CITIES WILL PAY THEIR SHARE OF COSTS THROUGH A**
28 **REDUCTION IN THE COUNTY'S, CONSOLIDATED GOVERNMENT'S, OR CITY'S BASE ENTITLEMENT SHARE UNDER 15-1-121.**

29 **(2) TO FULFILL THE INTENT OF SUBSECTION (1) FOR CASCADE COUNTY, GALLATIN COUNTY, LEWIS AND CLARK**
30 **COUNTY, MISSOULA COUNTY, FLATHEAD COUNTY, AND YELLOWSTONE COUNTY, AN AUDIT, BY OR AT THE DIRECTION OF**

1 THE LEGISLATIVE AUDITOR, MUST BE CONDUCTED AS FOLLOWS:

2 —— (A) FOR FISCAL YEARS 2003 AND 2004, THE AUDIT MUST BE OF ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES
3 IN DISTRICT COURT AND JUSTICE COURT PROCEEDINGS IN:

4 —— (i) FLATHEAD COUNTY;

5 —— (ii) CASCADE COUNTY;

6 —— (iii) MISSOULA COUNTY;

7 —— (iv) LEWIS & CLARK COUNTY; AND

8 —— (v) YELLOWSTONE COUNTY; AND

9 —— (B) FOR CALENDAR YEAR 2004, THE AUDIT MUST BE OF ACTUAL COSTS IN GALLATIN COUNTY FOR PUBLIC
10 DEFENDER SERVICES IN DISTRICT COURT AND JUSTICE COURT PROCEEDINGS. ON ALL ACTUAL COSTS FOR PUBLIC
11 DEFENDER SERVICES IN DISTRICT COURT AND JUSTICE'S COURT PROCEEDINGS INCURRED FROM JULY 1, 1998, THROUGH
12 JUNE 30, 2004, FOR WHICH RECORDS EXIST. THE AUDIT MUST SEPARATE THE COSTS BY EXPENDITURE CATEGORY AND
13 DISTINGUISH BETWEEN COSTS PAID BY A COUNTY AND COSTS PAID OR REIMBURSED BY THE STATE.

14 (3) EACH COUNTY AUDITED UNDER SUBSECTION (2) SHALL REIMBURSE THE LEGISLATIVE AUDITOR FOR 50% OF
15 THE COST OF THE AUDIT FOR THAT COUNTY.

16 (4) THE BY APRIL 30, 2006, THE RESULTS OF THE AUDIT MUST BE REPORTED TO THE GOVERNOR'S BUDGET
17 OFFICE, THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE FINANCE COMMITTEE, AND THE LAW AND JUSTICE INTERIM
18 COMMITTEE.

19 —— (5) PURSUANT TO 15-1-121(3)(A)(i)(B):

20 —— (A) THE ENTITLEMENT SHARE FOR EACH OF THE FIVE COUNTIES LISTED IN SUBSECTION (2)(A) MUST BE REDUCED
21 BY THE AMOUNT DETERMINED BY THE FOLLOWING CALCULATION:

22 —— (i) THE ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES IN FISCAL YEAR 2003 MUST BE ADDED TO THE ACTUAL
23 COSTS FOR PUBLIC DEFENDER SERVICES IN FISCAL YEAR 2004 TO ARRIVE AT A TOTAL ACTUAL COST;

24 —— (ii) THE TOTAL ACTUAL COST MUST BE DIVIDED BY 2 TO DETERMINE AN AVERAGE ACTUAL COST; AND

25 —— (iii) THE AVERAGE ACTUAL COST MUST BE MULTIPLIED BY 1.06526.

26 —— (B) THE ENTITLEMENT SHARE FOR GALLATIN COUNTY MUST BE REDUCED BY THE AMOUNT DETERMINED BY
27 MULTIPLYING THE COUNTY'S ACTUAL COST FOR PUBLIC DEFENDER SERVICES IN CALENDAR YEAR 2004 BY 1.03863.

28 (5) THE LAW AND JUSTICE INTERIM COMMITTEE SHALL PREPARE LEGISLATION TO BE INTRODUCED IN THE 2007
29 LEGISLATIVE SESSION THAT WILL AMEND 15-1-121 TO PROVIDE THAT THE BASE ENTITLEMENT SHARE FOR CASCADE
30 COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, FLATHEAD COUNTY, AND YELLOWSTONE

1 COUNTY IS ADJUSTED BY AN APPROPRIATE AMOUNT ARRIVED AT BASED ON THE AUDIT AND IN CONSULTATION WITH THE
2 LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE AUDIT COMMITTEE, REPRESENTATIVES OF THE COUNTIES, THE
3 GOVERNOR'S OFFICE, THE AMERICAN CIVIL LIBERTIES UNION, THE ATTORNEY GENERAL'S OFFICE, AND ALL OTHER
4 INTERESTED AND PARTICIPATING PARTIES.

5 (6) (A) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, AND EVERY 5 YEARS THEREAFTER, THE LEGISLATIVE
6 FISCAL ANALYST SHALL COMPARE THE PERCENTAGE CHANGE IN GENERAL FUND REVENUE FOR THE PREVIOUS 5 YEARS
7 TO THE PERCENTAGE CHANGE IN THE AMOUNTS ALLOCATED TO LOCAL GOVERNMENTS UNDER THE PROVISIONS OF
8 15-1-121, AS AMENDED IN 2005, AND THE ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES IN [THIS ACT] FOR THE SAME
9 TIME PERIOD.

10 (B) THE RESULTS OF THE COMPARISON MUST BE PRESENTED TO THE GOVERNOR, LEGISLATIVE FINANCE
11 COMMITTEE, LAW AND JUSTICE INTERIM COMMITTEE, AND SUPREME COURT BY SEPTEMBER 1 OF THE FOLLOWING FISCAL
12 YEAR.

13 (6)(7) AS USED IN THIS SECTION:

14 (A) "ACTUAL COSTS" MEANS ALL EXPENDITURES BY A COUNTY FOR PUBLIC DEFENDER SERVICES IN JUSTICE
15 COURT AND ALL EXPENDITURES BY A COUNTY FOR PUBLIC DEFENDER SERVICES IN DISTRICT COURT THAT WERE NOT
16 REIMBURSED BY THE OFFICE OF COURT ADMINISTRATOR PURSUANT TO 3-5-901; AND

17 (B) "PUBLIC DEFENDER SERVICES" MEANS ALL SERVICES AND SUPPORT ASSOCIATED WITH PROVIDING
18 DEFENDANTS IN DISTRICT COURT OR JUSTICE COURT PROCEEDINGS WITH ASSIGNED, APPOINTED, OR CONTRACTED
19 ATTORNEYS, INCLUDING:

20 (I) COMPENSATION;

21 (II) PERSONAL EXPENSES, INCLUDING TRAVEL, MEALS, AND LODGING;

22 (III) OFFICE OPERATING COSTS, INCLUDING RENT, UTILITIES, SUPPLIES, POSTAGE, COPYING, COMPUTER SYSTEMS,
23 AND OTHER OFFICE OPERATING COSTS;

24 (IV) PROFESSIONAL AND PARAPROFESSIONAL SUPPORT SERVICES, INCLUDING SERVICES PROVIDED BY
25 INVESTIGATORS, PARALEGALS, RESEARCHERS, AND SECRETARIES;

26 (V) SERVICES REQUIRED TO SUPPORT A DEFENSE, INCLUDING TRANSCRIPTS, WITNESSES, AND OTHER SUPPORT;

27 (VI) PROFESSIONAL SUPPORT, INCLUDING PROFESSIONAL EDUCATION AND TRAINING; AND

28 (VII) COSTS OF PSYCHIATRIC EVALUATIONS UNDER 46-14-202 AND 46-14-221, INCLUDING THE COST OF
29 EXAMINATIONS AND OTHER ASSOCIATED EXPENSES; AND

30 (VII)(VIII) OTHER SERVICES OR SUPPORT PROVIDED BY THE COUNTY TO PROVIDE ASSIGNED, APPOINTED, OR

1 CONTRACTED DEFENSE COUNSEL IN JUSTICE COURT AND DISTRICT COURT PROCEEDINGS.

2

3 NEW SECTION. Section 73. Interim report. During fiscal year 2007, the public defender commission
4 established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law
5 and justice interim committee, LEGISLATIVE AUDIT COMMITTEE, and supreme court regarding the operation and
6 administration of the statewide public defender system.

7

8 NEW SECTION. Section 74. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202,
9 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

10

11 NEW SECTION. Section 75. Codification instruction. (1) [Sections 1 through 4 and 6 through 14]
12 are intended to be codified as a new title in the Montana Code Annotated.

13 (2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the
14 provisions of Title 2, chapter 15, part 10, apply to [section 5].

15 (3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the
16 provisions of Title 41, chapter 3, part 4, apply to [section 15].

17

18 NEW SECTION. SECTION 76. DIRECTIONS TO CODE COMMISSIONER. WHENEVER REFERENCES TO
19 COURT-APPOINTED COUNSEL, COURT-APPOINTED ATTORNEY, APPOINTED COUNSEL, OR APPOINTED ATTORNEY APPEAR
20 IN LEGISLATION ENACTED BY THE 2005 LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO CHANGE THE
21 REFERENCES TO THE APPROPRIATE REFERENCES TO ASSIGNED COUNSEL OR ASSIGNED ATTORNEY.

22

23 COORDINATION SECTION. SECTION 77. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND
24 APPROVED AND IT INCLUDES A SECTION THAT AMENDS 15-1-121(3)(A)(I) AND:

25 (1) IF HOUSE BILL NO. 223 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS
26 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 223 IS VOID;

27 (2) IF HOUSE BILL NO. 334 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS
28 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 334 IS VOID;

29 (3) IF HOUSE BILL NO. 671 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS
30 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 671 IS VOID; AND